

1/11/01

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. W123/2000

BETWEEN DAWNETTE WALKER PLAINTIFF
AND HENSLEY PINK DEFENDANT

Mr. Campbell for the Plaintiff

Mr. Maragh for the Defendant

Heard: 27th November, 2001 and 7th December, 2001

CAMPBELL, J.

The plaintiff, Dawnette Walker aged 36, is a corporal in the Jamaica Constabulary Force. On the 7th September 1998 at about 9:30am, she was the driver of a marked police Toyota motorcar registered 202243. On reaching the intersection of Maxfield Avenue, Kew Rd., and Richmond Park Avenue there was a collision with a Station Wagon registered 0474AP, driven by the defendant.

The plaintiff and the other occupant of the vehicle were both injured. The plaintiff suffered injuries to her neck, right shoulder and upper back.

She sought medical attention at St Joseph Hospital, where she was treated by Dr. Jackson.

Her neck was x-rayed, she was prescribed painkillers and referred to Dr. Carl Dundas at the Orthopedic Association at Tangerine Place, on whom she attended on seven occasions.

Dr. Dundas ordered further x-rays. There were no medical reports from Dr. Dundas.

Dr. Dundas referred her to a physiotherapist, Dr. Robinson. The plaintiff testifies that she continued her visits to Dr. Dundas for a period of seven months. Nonetheless, she has been in constant pain since her accident, and said she was experiencing pain during her testimony. Other than requesting a seat, whilst she testified, she displayed no signs of discomfort, and appeared composed and at ease.

The plaintiff was advised to have a MRI done. She was subsequently referred to Dr. Cheeks, a neurosurgeon with offices at 3 Paisley Ave.

Dr. Cheeks referred Ms. Walker to a Dr. Chung, by whom she was treated for several months. Among the treatment she received for the constant pain she complained, she felt were steroids injection, these injection resulted in the plaintiff experiencing weight gain. She wore a cervical collar for a period of six months.

The plaintiff was away from her duties with the JCF for approximately one year and four months, returning to work in December 1999. Prior to her accident, she had been assigned to the Rape Unit. On her resumption of duties she remained at the Rape Unit for a month before her assignment to the Mediation Unit. She describes her duties as 'light' and testifies that this was as a result of her inability to write many statements because of pain. She has been promoted since her accident ,and at no time suffered a diminution in salary as a result of her accident.

She was sent to a Medical Board. It was suggested to her in cross-examination that she had initiated the process that led to the Medical Board, this suggestion she denied.

The plaintiffs' reenlistment came up in March 2000. Instead of the usual period of five years ,she could legitimately expect she was initially reenlisted for a period of one year. At the end of that period she was granted the remaining four years.

She had used all her available 70 days vacation leave during her 16 months away from work, she testified that she was reluctant to continue on sick leave because it would impact negatively on her record to be absent from duties for such a prolonged period due to illness. Prior to the accident, she made drapery, sheets and curtains in her spare time and earned about

\$30,000 per month from that source She admitted that she was not aware that she was allowed by the Regulations that governed her employment to have part-time occupations, in any event her claim was wholly unsupported by any documentary evidence . The figures were just thrown at the head of the Court..

Her salary after deductions amounted to \$30,000 per month.

General Damages

Dr. Randolph Cheeks, in his report dated 13th August, 1999 states that he examined the plaintiff on the 5th March, 1999 at the request of Dr. Dundas and noted the following:

There is painful restriction of left lateral rotation of the cervical spine and the left paraspinal cervical musculature is tender.

Testing the sensory modalities in the upper extremities reveals some diminution of pinprick sensation at the right thumb, index and middle fingers. The deep tendon reflexes are all normal and symmetrical except for the right supinator jerk, which was marginally depressed.

There is no evidence of impairment of spinal cord function. Muscle tone, power, and coordination are normal in all four extremities.

A MRI scan of the cervical spine shows evidence of damage to the c3-4 cervical intervertebral disk, which is herniating (bulging) posteriorly and indenting the theca sac. No injury to the spinal cord is present.

Dr. Cheeks opined that the onset of pain within 20 minutes of the accident suggest that the plaintiff suffered soft tissue injury, "a not uncommon sequel to motor vehicle accidents". The MRI scan corroborates his findings of soft tissue injury. Dr. Cheeks was of the view that she was liable to bouts of neck and shoulder pain periodically. He says the injury carried a PPD of five percent of the whole person.

Dr. Cheeks in his report dated 13th September 2001, stated that the plaintiff had reached "the point of maximum improvement". He states that the injury is likely to have mild impact on her occupation. Importantly, Dr. Cheeks gives his reason for an assignment of 5% PPD; he says *that* should she sustain further injury, she would be more vulnerable than a normal healthy person would.

Loss of Amenities

The plaintiff relied on the authority of Catherine Earle v George Graham page 173 (Khan IV) - to support a claim of \$1,327,000.00 – Age 22 - passenger. Her injuries were described as severe whiplash; there were marked spasms along the paracervical and Rhomboid muscles.

The plaintiff had experienced *four fainting spells, easy fatiguability and drainage from both ears*, with swelling in the *parathyroid regions*. Her range of motion of the cervical spine was markedly reduced by pain. Here was *a 10% disability of the cervical spine*. These injuries were significantly more severe than in the instant case.

Mr. Maragh referred the Court to some eight cases from Harrison's Casenotes page 84 and 85, all dealing with injuries to the neck specifically. Whiplash, with a range from \$305,656.77 (*Desmond Poyser v Superior Party Hireage Ltd.*) to \$36,074 (*Shirley Maynier Burke v Ervine Wilson and Vincent Tennyson*). Mr. Maragh submitted that when the Consumer Price Index for September 2001, was applied to these awards, they totalled \$1,437,198. or an average award of \$217,174.35. He further submitted that the instant case was not distinguishable from these cases. Of the authorities, to which the Court was referred I found that the most relevant was, Anthony Dixon v Geddes Refrigeration Ltd.-whiplash, injury to the cervical spine with fracture of the 6th cervical vertebra, is a case with injuries more serious than Ms. Walker's injuries; this is discounted to \$220,000.

Handicap on the Labour Market

The plaintiff was at work at the date of trial. The question we therefore ask ourselves is, what is the risk that W/cpl Walker at some time before the end of her working life ,will lose her job in JCF and be thrown on the labour market? See Moeliker v A Reyrolle and co. Ltd. (1977) 1 ALL.E.R 9 at page16.

Dr. Cheeks has opined that the injury "is expected to have a mild impact on her ability to function in her present occupation as a police officer". On her last assessment date she was accorded the remaining period of four years for re-enlistment. She has gained a promotion since her injury. On the other hand, the fact that she is to be subjected to intermittent episodes of pain, has to be factored in. She considered her present assignment as being inimical to chances of further promotion. The risk to future earnings, financial loss or the plaintiff's reduced eligibility is what is being assessed. The nature of the police officers job is such that it demands physical exertion; this officer proficiency has been impaired in this regard. The chance of the officer losing her job was very remote but possible. Similar employment would be difficult, say in the private security field, because of

the pain of which she complains. An award of \$100,000 for handicap on the labor market is therefore made.

Special Damages

The defendant claimed that she was unable to do her regular household chores and had to hire someone to do so. An award of \$51,000 is made.

Transportation

She had travelled from her home to Dr.. Dundas' surgery once per month. When she had started the fares were \$500 - \$600. Numerous visits to the several doctors are catalogued. The travel was by private taxi. The plaintiff considered travel on public transport to be risky because of the nature of her employment. An award of \$52,000 is made.

Loss of earnings

No award is made under this head. No diminution in earnings having been proven.

Household Help; An award of \$51,000 is made

Medical Report \$10,000

Medical bills - \$164,606.00

The plaintiff is awarded General Damages of \$220,000. Handicap on the Labour Market, \$100,000.

Special Damages of \$277,606 Costs to the Plaintiff to be agreed or taxed.